finally makes his decision he should first consult the State Development Officer and other civil servants. The views of these latter officers while valuable do not invalidate the final decision of the Ruler as to the lands and the total acreage needed.

With respect we do not think that *Donaldson's* case helps the applicants in any way. There the South Shields Corporation were authorised by a private Act of Parliament to make certain "street works" within the limits of lateral deviation shown on their deposited plans; and to take "for the purpose of the street works the lands shown on the deposited plans in connection therewith and which they may require for the purposes thereof respectively". The corporation claim that under the Act they were authorised to take the whole of a property belonging to the plaintiff, of which only a portion was shown as within the line of lateral deviation on the deposited plans, and they wrote to her solicitors that "such portion of the property as may not be actually required to be added to the street the corporation required to take in order that they may possess the frontage to the street, and sell the same so as to recoup themselves in part of the cost of the improvement." It was held by the English Court of Appeal that the Act did not confer a power to take land not wanted for street works but wanted simply for the purpose of diminishing the expense of the works by reselling it at a profit.

That case is distinguishable from the present in two ways. First, there is no question here of the Johore Government reselling any of the lands stated to be needed. Second, in that case there is no provision similar to our subsection (3) of section 8.

The Privy Council case mentioned, while not exactly in point, is also in our opinion against the applicants' contention here. There the Calcutta Improvement Trustees (referred to as the Board) acquired lands under the Calcutta Improvement Act, 1911. Section 42 thereof states that a road widening scheme initiated by the Board may provide for the acquisition by the Board of any land in the area comprised in the scheme which will in their opinion be *affected* by the execution of the scheme. The Board purported to acquire the land of Mr. Ghosh not because it was actually required for the scheme, but simply because in the opinion of the Board the land would be enhanced in value by its execution. Their Lordships cited with approval *Donaldson's* case but held: reversing the decision of two lower courts, that the Board had power under section 42 to so acquire Mr. Ghosh's land, even though it was not actually required for the scheme that the Board had in mind, because it would be enhanced or diminished in value by the scheme and therefore it would be land which would be affected by the execution of the scheme.

Though the Johore State Government had written "kegunaan khas" against the applicants' lands, finally they were acquired for a shipyard and it is argued that this change of intention on the part of Government also invalidates the acquisition proceedings. With respect we do not think that there is any merit in this argument either, for use as a shipyard is still use for an industrial purpose, which is specified in the first paragraph of Form D.

People are sentimentally attached to their lands and we are of course sorry for the applicants, but we regret that the law is clearly on the side of Government and we would therefore dismiss their appeal with costs. Their deposit to go to the respondent Government against their taxed costs.

Appeal dismissed.

Solicitors: *Jackson & Masacorale.*

CHOO AH PAT v. CHOW YEE WAH & ANOR.

[F.C. (Gill C.J. (Malaya), Ali and Ong Hock Sim F.JJ.) January 20, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 147 of 1973]

Personal Property — Joint account opened by deceased with first defendant for the benefit of his wife — Whether deceased was of sound mind at time cheque drawn up — Fraud — Whether authority given by deceased revoked by his subsequent mental condition — Rule of survivorship — Express trust.

In this case the deceased had prior to his death drawn a cheque for $60,384.80 and paid it into a joint account which he opened in his name and the name of the first defendant for the benefit of his common law wife. The questions that arose for consideration in the case were (1) whether or not the deceased was in full possession of his mental faculties when his thumbprints were affixed to the said cheque and documents; and (2) whether the presumption of a resulting trust was rebutted as there was a valid trust in this case. The learned trial judge answering both questions in the affirmative dismissed the appellant's claim to recover the money as administratrix of the estate of the deceased. (See [1974] 1 M.L.J. 62). The appellant appealed.

Held, allowing the appeal: (1) the facts in this case showed that the deceased was not in full possession of his mental faculties when his thumbprints were affixed to the cheque and other documents;

(2) in view of the uncertainty of the deceased's intention in this case there was no evidence of an express trust to rebut the resulting trust which arose.

Cases referred to:-

(1) *Standing* v. *Bowring* (1866) 31 Ch. D. 282, 287.
(2) *Cosnahan* v. *Grice* 15 E.R. (P.C.) 476, 479.
(3) *Russell* v. *Scott* (1936) 55 C.L.R. 440.
(4) *Milroy* v. *Lord* 45 E.R. 1185.
(5) *Mussoorie Bank* v. *Raynor* (1882) 7 App. Cas. 331.

FEDERAL COURT.

R. R. Chelliah (*Joginder Singh* and *G. Sri Ram* with him) for the appellant.

M. Shankar for the first respondent.

Chan Siew Yoon for the second respondent.

Ali F.J.: The appellant is the administratrix of the estate of her deceased son, Loke Aik Hoe @ Loke Yauk Hoh @ Loke Yauk Hoe, who died in the General Hospital, Kuala Lumpur, on July 24, 1967. The first respondent is deceased's brother-in-law and the second respondent is a banking corporation with its head office and sub-branch in the city of Kuala Lumpur, at Jalan Bandar and at Jalan Pasar respectively. At all material times the officer in charge of the sub-branch bank was Kwan Mun Koh, a defence witness in this case.

Before he was admitted to the hospital on July 13, 1967 the deceased was living in a rented flat with a woman named Chan Yoke Ying, another defence

witness, who as described in the defence pleadings was the common law wife of the deceased. In the petition for letters of administration the appellant described her as deceased's mistress.

On July 20, 1967, a sum of $60,384.80 was transferred from the deceased's personal account at the second respondent's Head Office bank to the sub-branch bank where, on the same date, a joint account was opened with the deceased and first respondent as joint holders. On July 30, i.e. after deceased's death, the first respondent closed the account. The balance in the account as on July 24, 1967 was $57,382.30. Between July 24 and July 30, 1967 the first respondent withdrew a total sum of $5,000. On July 31 he opened a joint account with his wife. He then withdrew $50,000 from this joint account and put the amount on fixed deposits in two lots of $10,000 and $40,000 which deposits were renewed every six months. Sometime early in October, 1969 Chan Yoke Ying applied to the bank to put, apparently, the same $50,000 on fixed deposits in her name.

The appellant filed her petition for letters of administration sometime in October, 1967. It would appear that she had been living in Singapore for sometime with her adopted daughter, Siew Kim. On hearing that deceased was in hospital she came to Kuala Lumpur on July 19. According to her on that date and until he died the deceased was unable to recognise her or speak to her. In due course, about the middle of 1968, she instructed her solicitors to make enquiries from local and Singapore banks as regards monies in the deceased's accounts. When she was informed of the transfer of deceased's money as stated above she asked for detailed particulars of the circumstances in which the transfer was made. Having reasons to believe that the transfer could not have been authorised by the deceased she commenced proceedings to recover the money following the grant of letters of administration to her sometime in September, 1970.

In her pleadings she alleged, amongst others, fraud. In the particulars of fraud set out she said that in view of deceased's illness the thumb-prints could only have been obtained when the deceased was either fast asleep, not fully conscious or in delirium, or that they could have been obtained either immediately before or immediately after the deceased's death. She based these assumptions on the medical evidence which was subsequently given at the trial. Alternatively, she contended that even if deceased had voluntarily authorised the transfer of the money to the joint account such authority was revoked by his subsequent mental condition. She further contended that the whole amount in the joint account having been contributed by the deceased the rule of survivorship at law is overridden by equity. The equitable rule as stated by Cotton L.J. in *Standing* v. *Bowring*[1] is as follows:

"the rule is well settled that where there is a transfer by a person into his own name jointly with that of a person who is not his child, or his adopted child, then there is *prima facie* a resulting trust for the transferor. But that is a presumption capable of being rebutted by showing that at the time the transferor intended a benefit to the transferee,"

See also *Underhill's* Law of Trusts and Trustees, 12th Edition, page 211.

The respondents' common defence was a denial of the allegation of fraud. They maintained that the deceased voluntarily executed the said cheque and documents on July 18, 1967. They further maintained that the joint account was an arrangement aimed at making provision for deceased's common law wife, Chan Yoke Ying. The defence contention apparently was that the presumption of a resulting trust is rebutted by evidence of an express trust. In her reply the appellant joined issue stating that in the particular circumstances of this case no valid trust could have prevailed.

Both here and below two questions arose for consideration and they are as follows: Firstly, a question of fact whether or not deceased was in full possession of his mental faculties when his thumbprints were affixed to the said cheque and documents on July 18, 1967, and secondly, if he was, could a valid trust prevail in this case. The learned trial judge answering both questions in the affirmative dismissed the action.

The first question primarily involves the consideration of the medical evidence relied on by the plaintiff as establishing that deceased was in a state of mental confusion when his thumbprints were affixed to the said cheque and documents. The medical evidence which is voluminous has been referred to in some detail in the judgment of the trial judge who said that although there was some evidence of mental confusion it was insufficient to justify a finding that deceased was in a state of mental confusion at all times. Thereupon he concluded that deceased was not in a state of mental confusion on July 18, 1967.

The medical evidence, shortly stated, was as follows: On his admission to the General Hospital, Kuala Lumpur on July 13, 1967 the deceased was found suffering from hypertensive cardiac failure and cardiac cirrohsis which means that he was having heart as well as liver troubles. The fact that he was seriously ill on that day is beyond doubt. Dr. Vignaendra who admitted him to the hospital said he noticed signs that deceased was having heart and liver troubles. He also said that deceased had a history of diabetis which, however, was not troubling him. On July 14, it was found from tests carried out that deceased's kidneys were also troubling him. His blood urea on that day was 168 m.g. per cent. The clinical notes made by doctors who examined him indicated that his condition was progressively deteriorating. Dr. Lim Eu Jin, a physician, who said this also stated that deceased was mentally confused, not orientated and not aware of his surroundings. He formed this opinion because he was unable to engage the deceased in any intelligent conversation. On July 19 the deceased's blood urea had gone up to 360 m.g. per cent. The indications were that waste products were being retained in his blood. On that day Dr. Lim wrote a note to the surgeon urologist Mr. Sreenevasan suggesting dialysis. The surgeon saw the deceased on July 20 but formed the opinion that he was not a suitable case for dialysis. He said that deceased would not or could not be made to lie down in bed. He described the deceased as a case of mental dementia. Dr. Sinnadurai, a physician and head of the medical unit in the hospital, spoke of the deceased's condition on the night of July 19, 1967 in these words —

"On the 19th night, his condition got worse. He started pulling out all the tubes we put in. He showed evidence of psychotic behaviour — like a mad man."

Another medical witness Dr. Daljit Singh also gave evidence generally to the same effect. Bearing in mind the appellant's allegation of fraud which suggests that the thumbprints could easily have been obtained on any day between July 13 and July 20, 1967 and not necessarily on July 18 and the fact that the cheque and documents were not signed, there seems to be force in the appellant's counsel's submission that the medical evidence had established that the cheque and documents were not signed because of deceased's mental condition. He pointed out that appellant is not required to prove her case beyond reasonable doubt as in criminal proceedings. On the other hand, he said, in a case of this nature there is always a tendency to fabricate. In his written submission at the trial counsel for the appellant referred to *Cosnahan* v. *Grice*[2] in which Lord Chelmsford observed in these words —

"Cases of this kind demand the strictest scrutiny. So many opportunities, and such strong temptations, present themselves to unscrupulous persons to pretend these deathbed donations, that there is always danger of having an entirely fabricated case set up."

In the instant case it is not difficult to see that deceased's thumbprints on the cheque and documents could easily have been obtained in the manner alleged by the appellant in her statement of claim. Her suspicion that they were so obtained was not altogether unfounded. The fact that deceased was a very sick man and that his illness had affected his mind is beyond doubt. There is also no doubt that his condition was progressively deteriorating from the day he was admitted to the hospital. As I understand the medical evidence he was most of the time, if not all the time, in a state of mental confusion because of the large amount of waste products in his blood. Dr. Sinnadurai in his evidence stated that a patient suffering from kidney ailment usually presents a picture of well being. In my respectful view the appellant's evidence considered as a whole reasonably supports a case of fraud as alleged by the appellant. It remains for consideration whether there is anything in the defence evidence to support a different conclusion. The view of the learned trial judge on the defence evidence was summed up in the following words —

"I have examined the evidence of Kwan Mun Koh and Chan Yoke Ying including the testimony given under cross-examination very carefully. I am fully satisfied that they were telling the truth. I do not think there is any need for me to repeat what they said. Suffice for me to say that on the evidence given by them, I am satisfied that the deceased knew what he was doing when he drew the cheque and gave the authority to open a joint account. I am also satisfied that he was not in any way deceived into affixing his thumbprints. I am further satisfied that he was then of sound memory and understanding and that he fully appreciated the nature and effect of his act."

Shortly stated the defence evidence was as follows: In his evidence the first respondent Chow Yee Wah had stated that on July 12, 1967 he met Kwan Mun Koh at a birthday party where he was told that deceased was sick and that he wished to see first respondent about opening a joint account. The following morning, on July 13, he went to deceased's flat. Deceased, he said, was alone. He stayed for about an hour discussing the opening of a joint account with the deceased. The purpose of the joint account, he said, was to make provision for Chan Yoke Ying. It is not clear whether Chan Yoke Ying was present and understood what was being discussed. Seeing that deceased was sick the first respondent suggested that he would call Dr. Loke Wye Tuck, a nephew of the deceased, which was agreed. On the way back Chow Yee Wah stopped at Dr. Loke's clinic at Jalan Pahang. He told the doctor to go and see his uncle who was sick. As Dr. Loke did not know where deceased was living first respondent accompanied him to the deceased's flat. On examining deceased's blood pressure Dr. Loke advised deceased to go to hospital and undertook to arrange for an ambulance. He told first respondent that deceased had a weak heart. At about 5 p.m. that day deceased was taken to the hospital by ambulance accompanied by the first respondent. He visited the deceased on the following day, July 14. He saw deceased was sick but that he was drinking beer to make it easier for him to pass urine. On that day they did not talk about the joint account. On July 15 he and his wife visited the deceased and stayed for half an hour or more. On that day there was some argument or altercation between deceased and his half sister, first respondent's wife, over certain payment arising from a subdivision of land belonging to the estate of their father Loke Chew Kit. Deceased was the administrator of the estate. According to first respondent deceased refused to sign the agreement to pay the fees when asked by his half sister to do so. First respondent also said that —

"The deceased told my wife that he would look into the matter when he recovered and came out of hospital."

I pause to observe that according to Kwan Mun Koh on July 11, 1967 deceased had told him about opening a joint account because he was afraid he might die. To continue with the evidence of first respondent he said that he also visited the deceased on July 16 but not on July 17. On July 18 Dr. Loke Wye Tuck telephoned first respondent between 10 a.m. and 11 a.m. to say that deceased had decided to open a joint account and that first respondent was to ask Kwan Mun Koh to meet him at the hospital on that day at about 5 p.m. As to what happened in the hospital ward the first respondent's evidence was the same as that of Kwan Mun Koh which is as follows: Kwan Mun Koh was the officer in charge of the sub-branch bank at Jalan Pasar. Deceased was his uncle. He said that on July 11, 1967 he was asked to see the deceased at his flat. He went there. He noticed that deceased was sick and that his leg was slightly swollen. Referring to his conversation with the deceased he said —

"He told me he wanted to make provision for his wife. We were both seated in the hall. He wanted to open a joint account in joint name of himself and Chow Yee Wah — the first defendant. He wanted his money in his personal account at Head Office to be transferred to this joint account. He told me that if anything should happen to him, Chow Yee Wah would be able to look after his wife with the money. He did not tell me how much money he had in his personal account at Head Office. He wanted me to find out how much he had with Head Office. I promised to let him know the next day."

He saw the deceased on July 12 and told him that his bank balance then stood at $60,000. He went to see the deceased in the hospital on July 13 and 14 but apparently did not discuss the joint account. He said it was discussed on July 16 but nothing happened. He

then referred to first respondent's telephone call on July 18 and said —

"On July 18 Chow rang up in the afternoon to say that he and my uncle had discussed the matter and that I should get ready all the necessary documents for my uncle to sign.

I made arrangement with Chow for the signing of the documents. It was to take place in the hospital at 5.00 p.m. on 18th. I went to the hospital at 5.00 p.m. I brought along standard equipment and forms. By 'standard equipment' I mean stamping pad, date chop and thumbprinting set."

After saying that deceased was in a cheerful mood he went on to described how deceased asked his wife Chan Yoke Ying to get the cheque book from the drawer. Kwan Mun Koh at first mentioned the figure $63,384.80 (corrected to $60,000 before us) as the amount which deceased asked him to write in the cheque. Shortly afterwards he said this —

"He did not mention any figure. He just asked me to fill in for him."

It is not clear, therefore, when was the amount $60,384.80 written on the cheque and where was it written. Kwan Mun Koh went on to say that deceased asked him if he could affix his thumbprint on the documents instead of signing them. The reason given by the deceased was that his hand was slightly swollen and that he had difficulty in holding a pen. He was afraid that his signature might not be good. Kwan Mun Koh decided that deceased could affix his thumbprints. Thereupon he prepared the stamping pad, handed it to the deceased who pressed his thumb against it having asked Kwan Mun Koh to guide him where to put his thumbprints. First respondent did not sign the documents on that day because he did not have his identity card. He went to the sub-branch bank on July 20 to sign it. It is not clear when the cheque was sent to the Head Office bank for clearance but the stamp on the cheque indicates that it was cleared on July 20, 1967. The application to open the joint account also dated July 20, 1967 although according to the evidence it was thumbprinted on July 18. The application was approved by Kwan Mun Koh presumably on the strength of the deceased's thumbprint which he had witnessed earlier. Chow Yee Wah's signature appears twice on the application. Why twice and not once is also not clear. In the specimen signature card which was signed by the first respondent presumably on July 20, 1967 and thumbprinted by the deceased on July 18, 1967 the address given was only that of Chow Yee Wah. Again no reason was given why deceased's address was not there. Continuing with his evidence Kwan Mun Koh said that on July 20 he saw deceased and told him that the account had been opened. Deceased, he said, was happy. He also said this —

"Everything I did, i.e. the opening of the joint account — was done in accordance with the wishes of my uncle. My uncle had no children."

He did not see the deceased again after July 20. On July 31 first respondent withdrew $55,382.30 with which he opened another joint account with his wife. On the same day they put on fixed deposits sums of $10,000 and $40,000 which were renewed every six months until October 31, 1969 when Chan Yoke Ying applied to the sub-branch bank to put also $50,000 on fixed deposits of $10,000 and $40,000 in her name. In cross-examination he said that his brother, Peter Kwan, was working as manager at the Head Office bank in July, 1967. As it seems to me the suggestion was because of this there was no difficulty in getting the cheque cleared by the Head Office bank. To another question relating to the clearance of the deceased's cheque by the Head Office bank he said if it had been a Chartered Bank cheque, for instance, it would have to be sent to the Central Bank (Bank Negara) for clearance.

Both first respondent and Kwan Mun Koh were cross-examined at some length. Kwan Mun Koh was asked why a doctor was not present when the thumbprinting had to be done. He said there was no doctor around. He was also asked about the thumbprinting set. He said it was brought not because he knew before hand that deceased would be unable to sign the cheque but because it was the practice to bring the standard equipment when business had to be done outside the bank premises. He admitted, however, that the thumbprinting of the cheque was done outside the normal working hours of the bank.

Lastly, there was also the evidence of Chan Yoke Ying who supported the first respondent and Kwan Mun Koh on the thumbprinting of the cheque and documents. Her evidence, however, does not suggest that she knew the joint account was opened for her benefit. At least not before the middle of 1968 when she decided to file a caveat to oppose the appellant's petition for letters of administration. Why she did not do so earlier is not clear. Was it because she was not sure of her position as the lawful widow of the deceased? The fact that she decided to take proceedings in January 1969 to assert her claim fairly supports the view that she did so on the advice of the first respondent. She was so advised because the first respondent knew or had reason to know that he could no longer hold on to the money as his own. Without Chan Yoke Ying he would have no defence to the appellant's claim to the balance of $57,382.30. The probate suit No. 1 of 1969 filed by Chan Yoke Ying was, however, settled when the appellant agreed to let her have some of the deceased's monies in other banks. When it became clear to the first respondent that appellant would proceed with her claim to the money in this case upon obtaining the grant of letters of administration he apparently decided to hand over the two fixed deposits totalling $50,000 to Chan Yoke Ying. Hence her application to put this amount on two fixed deposits of $10,000 and $40,000 sometime in October, 1969. In view of this it is not difficult to see where Chan Yoke Ying's interest lies in this case. The various gaps in the evidence of first respondent and Kwan Mun Koh and also Chan Yoke Ying's interest in this case make it difficult for me to accept as true that deceased voluntarily thumbprinted the cheque and documents as stated by them. The need for careful scrutiny as stated by Lord Chelmsford in *Cosnahan* v. *Grice*[2] is another reason for saying that defence evidence should not have been accepted without corroboration. Needless to say that there was no corroboration. As regards the first question therefore I respectfully differ from the learned trial judge by answering it in the negative, that is to say that the deceased was not in full possession of his mental faculties when his thumbprints were affixed to the cheque and other documents.

On the second question the learned trial judge was of the view that there was a duly constituted trust. He agreed with the respondents' submission that the effect of the joint account was to vest in the deceased and the first respondent rights to the money in the account. *Russell* v. *Scott*[3] was relied upon as supporting this view. *Russell* v. *Scott* is a decision of the Australian High Court. It was a case in which an elderly lady transferred all her money to a joint account of which she and her nephew were joint holders. Speaking of the joint account Starke J. said, on page 448, that its effect was to vest in the holders right to the money and this carries with it a legal right to title by survivorship. The vesting, he said, takes effect immediately and is not dependent on the death of one of the holders. On that view he held that a gift or disposition by way of a joint account is not a testamentary disposition and rejected the argument that it was. Having done that he went on to consider the question of trust and, on page 449, he referred to the rule stated by Cotton L.J. in *Standing* v. *Bowring*,[1] as already referred to above, and concluded that any presumption of a resulting trust under the rule has been rebutted by the fact as found by the trial judge that the aunt had intended the nephew to take, beneficially, whatever balance at her death. In the instant case it has been submitted that although there was no intention that Chow Yee Wah, the first respondent, was to take beneficially the presumption of a resulting trust has nonetheless been rebutted by the fact that the deceased intended his common law wife, Chan Yoke Ying, though not a surviving holder of the account, to take beneficially whatever balance in the joint account at his death. This point did not arise in *Russell* v. *Scott*.[3] Nor did it arise in *Standing* v. *Bowring*.[1]

The defence case, as I understand it, is that there is evidence of an express trust to rebut the presumption of a resulting trust. It thus becomes necessary to examine the evidence. The evidence of Kwan Mun Koh was that on July 11, 1967 he discussed with the deceased the proposal to open a joint account with Chow Yee Wah, the first respondent. The purpose of the account, he said, was to make provision for Chan Yoke Ying and the reason for it was that deceased was sick and was afraid that he might die. As a result of this Kwan Mun Koh told first respondent at a party what had been discussed and asked him to see the deceased. First respondent saw the deceased on July 13 who again discussed the said proposal. It is not clear how much of the money was to be given to Chan Yoke Ying and how or in what manner the joint account was to be operated during his life time or after his death. As pointed out by counsel for the appellant if deceased had intended Chan Yoke Ying to have all or part of the money in the bank there was no reason why he could not give her a cheque for it instead of opening an account. The deceased was intelligent enough to understand what would be the practical thing to do if in fact he knew that he was going to die and that it was necessary to make provision for Chan Yoke Ying. Even if it be true that he wanted to open a joint account as stated by defence witnesses it might well be because he had no reason to think that he was going to die but that the joint account would be a convenient arrangement for Chan Yoke Ying to get money for necessary expenses from first respondent instead of having to get the deceased who was sick to sign cheque or cheques for the purpose.

In my respectful view there was nothing in the defence evidence which could point with reasonable certainty to the fact that deceased intended to create a trust or to make a voluntary settlement which is binding on him. See *Milroy* v. *Lord*[4] per Turner L.J. If I may say so even the learned trial judge was not certain what the deceased's intention was when he said —

> "It is true that the gift was contingent in the sense that she" (Chan Yoke Ying) "would only be entitled to benefit on the deceased's death, and, that if the deceased should recover from his illness, the money would still be his."

I think the rule is that for a valid trust to prevail there must be reasonable certainty as regards intention to create a trust. Not only that there must also be reasonable certainty as regards the property which is to be held in trust. In *Underhill's* Law of Trusts and Trustees, 12th Edition, it is stated on page 22 thus:

> "However, intention to create a trust is not of itself sufficient (even where the most direct and imperative words of confidence are used), if either the property, or the persons to be benefited, or the way in which they are to be benefited be not indicated with reasonable certainty."

See also *Mussoorie Bank* v. *Raynor*.[5] In view of the uncertainty of deceased's intention in this case I would conclude that there was no evidence of an express trust to rebut the presumption of a resulting trust as referred to in the rule stated by Cotton L.J. in *Standing* v. *Bowring*[1] or stated by Starke J. in *Russell* v. *Scott*.[3]

For the reasons above stated I would set aside the judgment of the trial court. There will be judgment against both respondents in the sum of 60,384.80 with costs. The appellant shall also have the costs of this appeal.

Gill C.J. and **Ong Hock Sim F.J.** concurred.

Appeal allowed.

Solicitors: *Joginder Singh & Co.; Shearn, Delamore & Co.; Shook Lin & Bok.*